

## REMARKS

Applicants would like to thank the Examiner for the careful consideration and substantive effort given this case. The Examiner has objected to the disclosure because it contains embedded hyperlinks and/or other forms of browser-executable code. The embedded hyperlinks have been removed from page 9, first paragraph, and page 10, first paragraph, of the specification. The Examiner has further noted the use of the trademark MICROSOFT WORD® in the application in an undesignated format. The trademark has been designated in capital letters in the amendments to page 9, first paragraph; page 10, third paragraph; page 13, third paragraph; page 33, second paragraph; page 38, third paragraph; and page 39, third paragraph. None of the amendments to the specification have introduced new matter. Each replacement paragraph supplies amendments directed to overcoming one or more of the Examiner's objections. Accordingly, Applicants respectfully request that the Examiner withdraw the objection to the specification for each of the above-listed reasons.

The Examiner has also noted that the description portion of the application contains a computer program listing consisting of more than three hundred (300) lines. Since the computer program listing exceeds three hundred lines, the Examiner has requested that a computer program listing appendix on compact disc conforming to 37 C.F.R. § 1.96(c)(2). The Examiner has also requested that an appropriate reference be added to the specification. The Examiner has further requested that Applicants cancel the computer program listing appearing in the Visual Basic Source Code Appendix. Applicants have submitted a computer program listing appendix on compact disc with this Amendment and Response. Applicants have inserted an appropriate reference to the computer program listing appendix starting on page 1 of the specification. In addition, Applicants request that the Examiner cancel the computer program listing appearing in the Visual Basic Source Code Appendix and Prolog Source Code Appendix.

Accordingly, Applicants respectfully request that the Examiner withdraw the objection to the specification for these reasons.

The Examiner has objected to claims 8 and 15 because the word “he” should be “the.” Applicants have amended claims 8 and 15 to incorporate this change. The Examiner has also objected to claim 17 because the acronym “TCA” should be defined prior to use.

Applicants have replaced “TCA” with “Test Creation Assistant” in claim 17. Accordingly, Applicants respectfully request that the Examiner withdraw the objection to claims 8, 15 and 17 for these reasons.

Claims 1, 5-7 and 12-14 have been amended to correct minor typographical errors. No new matter has been added by these amendments. The amendments also do not narrow the scope of claims 1, 5-7 and 12-14 and have not been made for reasons of patentability.

The Examiner has rejected claims 9, 10 and 18 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Each of claims 9, 10 and 18 has been cancelled from the present application. Accordingly, the Examiner’s rejections to claims 9, 10 and 18 are moot.

The Examiner has rejected claims 1-8, 11-16, 19 and 20 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,315,572 to *Owens et al.* Applicants have submitted Affidavit of Randy Elliot Bennett under 37 C.F.R. § 1.131 (the “Affidavit”) antedating *Owens et al.* and attached hereto.

MPEP § 715 states that an affidavit or declaration under 37 C.F.R. § 1.131 may be used “to antedate a reference or activity that qualifies as prior art under 35 U.S.C. § 102(e), where the reference has a prior art date under 35 U.S.C. § 102(e) prior to applicant’s effective

filing date, and shows but does not claim the same patentable invention.” *Owens et al.* has a prior art date of April 5, 1999. Applicants’ effective filing date is September 1, 1999. Since the prior art date of *Owens et al.* is less than one year prior to Applicants’ effective filing date, Applicants may file an affidavit under 37 C.F.R. § 1.131 if *Owens et al.* does not claim the same patentable invention.

The invention described in claims 1-8, 11-16, 19 and 20 of Applicant’s application is directed to methods and systems of generating test item variants. In contrast, *Owens et al.* is directed to methods and systems of authoring, learning and evaluation for arranging data relevant to a topic into a format which allows for presentation of that data and concomitant user initiated testing of portions of that data through questions that are randomly generated. In other words, *Owens et al.* generates random test questions from instructional material. Applicants’ invention, on the other hand, generates variations on test questions using test item variants for particular elements of test items. Since *Owens et al.* is not directed to the same invention as Applicants’ invention and the prior art date of *Owens et al.* is less than one year prior to the effective filing date of Applicants’ invention, Applicants may file an affidavit under 37 C.F.R. § 1.131 antedating *Owens et al.* Thus, Applicants have filed the Affidavit to overcome the Examiner’s rejection of claims 1-8, 11-16, 19 and 20. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 1-8, 11-16, 19 and 20 as being anticipated by *Owens et al* in light of the Affidavit.

The Examiner has rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over *Owens et al.* Claim 17 depends indirectly from claim 13. Since Applicants’ invention of claim 13 antedates *Owens et al.* as shown by the Affidavit, *Owens et al.* is no longer

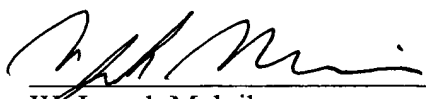
a proper reference for rejecting claim 17 under 35 U.S.C. § 103(a). Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claim 17 for at least this reason.

Applicants submit that the response set forth herein is sufficient to explain the differences between the claimed invention and the Examiner-cited prior art. Accordingly, Applicants request allowance of claims 1-8, 11-17, 19 and 20. In the event that the Examiner is not prepared to grant such an allowance, the undersigned attorney respectfully requests an interview with the Examiner before the next Office Action.

**AUTHORIZATION**

A fee for a Two-Month Extension of Time is believed to be required for the submission of this Amendment and Response as set forth in the concurrently submitted Petition for Extension of Time. The Commissioner is hereby authorized to charge any additional fees which may be required for this Amendment and Response, or credit any overpayment, to deposit account no. 50-0436.

Respectfully submitted,  
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